IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 858 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHYABHAI SHANKERDAS PATEL - Petitioner(s)

Versus

DISTRICT DEVELOPMENT OFFICER & 1 - Respondent(s)

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Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/11/2005

ORAL JUDGMENT

1. In the present petition, the petitioner who was a Sarpanch of Village Kansa, Taluka Visnagar, District

Mehsana has challenged his removal order passed by the District Development Officer on 26/9/2003. The petitioner is also aggrieved by the order dated 12/1/2004 passed by the Additional Development Commissioner by which the appeal of the petitioner against the order passed by the District Development Officer came to be rejected.

2. While performing the duties as a Sarpanch a show cause notice came to be issued against the petitioner on 31/7/2003 and as many as eight charges were levelled against the petitioner regarding misconduct in discharge of his duties. The petitioner was given opportunity to file his reply. His advocate was heard by the District Development Officer before final order came to be passed on 26th September, 2003. The District Development Officer found that charge nos. 1, 2, 4, 5 and 6 levelled against the petitioner are proved. Considering the gravity of charges District Development Officer ordered removal of the petitioner in exercise of power u/s 57(1) of the Gujarat Panchayats Act, 1993. Appeal of the petitioner was also rejected by the Additional Development Commissioner.

3. Though as many as five out of eight charges levelled against the petitioner are held to have been proved, I find that first two charges levelled against the petitioner and which are held to have been proved by the District Development Officer would require specific consideration since both these charges are of serious irregularities involving finanical matters.

4. First charge against the petitioner in this regard was that from Village Kansa till Umiyanagar Water Work pressure pipeline was sanctioned in the year 1994-95. Grant was also approved in the year 1999-2000. Instead of laying down a new pipeline, the petitioner as a Sarpanch connected the old pipeline by providing some joints of PVC pipes. In doing so though he had not purchased new pressure pipelines he had put a bill of Ganesh Sanetary House, Visngar dated 28th February, 2002 and claimed an expenditure of Rs. 12,000/-. He thereby mis-appropriated the said amount.

4.1 In respect to this charge the petitioner stated inter alia that due to oversight the resolution in this regard was initially not passed by the Gram Panchayat, however subsequently on 31/5/2003 by majority of members

of the Panchayat a resolution was passed approving the work done by the petitioner and noting that due to oversight earlier resolution was not passed. The petitioner further stated before the authority that he has not committed any mis-conduct or mis-appropriation of the amount in question.

4.2 District Development Officer however rejected the defence of the petitioner. He noted that the petitioner has not rendered any explanation about the allegation that he had submitted false vouchers and claimed the money. He also noted that the question of not having passed the resolution earlier had no connection with the charge and the resolution of the Panchayat dated 31/5/2003 does not explain the conduct of the petitioner.

4.3 I find that the District Development Officer was justified in drawing the above conclusions. The charge against the petitioner specifically was that for not having undertaken the work of laying down new pipelines and only providing for minor joints in the existing old pipelines the petitioner had claimed an expenditure of Rs. 12,000/- submitting bill for the material which was never purchased by him. To this point of charge, the

petitioner has not rendered any explanation in his reply statement before the District Development Officer. Question of authorisation by the panchayat before and passing rectification resolution later on was never an issue. Reply of the petitioner was evasive and till passing of the order by the District Development Officer he could not render satisfactory explanation about the expenditure which was prima-facie found to be unauthorised.

5. Second charge against the petitioner which was accepted by the District Development Officer was that for the period between 11/7/2002 to 31/3/2003 under different vouchers petitioner spent an amount of Rs. 1,60,150/-. It was recorded that the said expenditure was for removal of encroachment. It was alleged that encroachments recorded in the register have not been removed. Notices have not been issued to the encroachers. No permission was taken from the competent authority before spending to show that the amount was actually spent. It was, therefore, alleged that the petitioner mis-used his position as a Sarpanch.

5.1 In response to this charge besides denying the same

the petitioner suggested that the expenditure was approved by the Panchayat and a resolution was passed on 29/1/2003.

5.2 District Development Officer rejected the defence of the petitioner. He recorded that for spending amount of Rs. 1,60,150/- does not show as to where exactly the encroachments were removed. No details are supplied. The explanation of the petitioner is not in response to this charge. He, therefore, found that the charge is proved.

5.3 I find that there was sufficient material on record to permit the District Development Officer to come to above conclusions. Till passing the order the petitioner could not produce details of the expenditure incurred. There was no material before the District Development Officer to ascertain from which location the encroachments were removed and for what purpose the payments were made. Though not produced before the District Development Officer the petitioner has produced certain vouchers to this Court evidencing the payments of different amounts. Perusal of the vouchers would further show that the amount is spent in a rather careless

fashion. In none of these vouchers any details having been given, the nature of work performed, the duration of such work, the rate at which the remuneration was agreed to pay and even the date on which such work is carried out. Surely pubic money of seizable amount cannot be utilised in this fashion.

6. I am unable to accept the contention raised on behalf of the petitioner by learned advocate Shri Jani that since the steps taken by the petitioner which led to the above two allegations were approved by the panchayat later on, the petitioner ought not to have been removed from his position. I am also unable to agree to the suggestion that the allegations at the very worst would amount to procedural irregularities and that there is no element of doubtful integrity. Both the charges include spending public money unauthorisely and in fact there is a strong element of doubtful integrity alleged and established against the petitioner. I see no reason to interfere with the orders passed by the authorities below. It is contended on behalf of the petitioner that in view of the decision of this Court in the case of **Kamlaben Rohitbhai Patel v. Additional Development Commissioner reported in 2000(2) GLR 1174** the petitioner

ought not to have been removed as a Sarpanch. In the said decision learned Single Judge of this Court came to the conclusion that a Sarpanch cannot be removed for procedural irregularities or accounting procedure. I find that petitioner was not involved in merely committing procedural irregularities. Charges against the petitioner were most serious. Ratio laid down in the above mentioned decision will, therefore, not apply. It is lastly contended that complaints were made against the petitioner which led to issuance of the notice and final order for removal. Neither these complaints nor the report submitted by the authorities were supplied to the petitioner. It appears that such a demand was never made by the petitioner before the authorities below. Additionally the orders passed are not founded either on the complaints or any report if made, before issuance of show cause notice. When the material which is used against the petitioner is supplied to him, I do not see any breach of principles of natural justice having been committed by the authorities in passing the orders under challenge. Petition is, therefore, rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

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